

## Section 4.6

### Stipulation and Waiver to Order

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#### Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- What constitutes a Stipulation and Waiver to Order?
  - What latitude do we have with the wording? Simplifying or changing the wording on this form might help with getting the Respondent's signature.
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#### Definitions

The following table includes terms and definitions pertinent to this topic:

Term	Definition and Guidance and Discussion
Stipulation	A stipulation is a voluntary agreement between opposing parties concerning some relevant point. Stipulations with respect to matters of fact, law, or penalty amount make the hearing more convenient and expedient for both the county and the Respondent. Matters that are the subject of a stipulation are no longer in dispute or contested and need not be addressed at the hearing.
Waiver	A waiver is the voluntary relinquishment of a legal right or advantage. The party alleged to have “waived” a right must have had both knowledge of the existing right (in this instance, the right to a fair and impartial hearing) and the intention to give up that right.
Order	An order is a command, direction, or instruction of a judge, court, adjudicating officer, or agency. In this case, the “Order” is written and is delivered by the county agricultural commissioner (CAC) in the context of a civil penalty action. Food and Agricultural Code section 12999.5 and Business and Professions Code section 8617 authorize the CAC to levy a fine and “Order” the fine be paid.

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#### What does the “Stipulation and Waiver to Order” have to say?

When an “offer” to enter into a “Stipulation and Waiver to Order” is attached to a Notice of Proposed Action (NOPA) and mailed to the Respondent, it must consist of three items:

- An **Order** of a CAC stating the amount of the fine.
  - A **Stipulation** to be signed by the Respondent agreeing the NOPA states grounds for a civil penalty action and agreeing to the Order setting the fine.
  - A **Waiver to Order** to be signed by the Respondent waiving his/her right to a hearing before the fine is imposed and all appeals afterwards.
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## Stipulation and Waiver to Order, Continued

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**“What latitude do CACs have with the wording?”**

There is not much “latitude” for the wording. The wording set forth in the example below is quite simple. Its purpose is to ensure the Respondent knows he/she has and intends to waive their rights to a hearing and to any appeals from the order that will issue, and the order is based on a valid legal claim supported by the uncontested facts.

The Department of Pesticide Regulation (DPR) strongly discourages any changes to the wording of its examples of “Stipulation and Waiver to Order” unless the proposed changes have been reviewed and approved by your County Counsel. The following example is a modification of the form currently used. It is not a substantive change, but a clarification of the prior form. DPR added the phrase “without admitting to the violations alleged in the Notice of the Proposed Action” in the last paragraph of the “Stipulation and Waiver to Order.” The modified form may be used by CACs, if they prefer.

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## Stipulation and Waiver to Order, Continued

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**Suggested  
Stipulation  
form**

DPR prefers the following “form” which combines the “Order and Stipulation” and the “Stipulation and Waiver to Order.” This ensures the Respondent is simply and fully advised of his or her rights.

COUNTY OF \_\_\_\_\_  
AGRICULTURAL COMMISSIONER’S OFFICE

ORDER AND STIPULATION  
FILE NO. (county abbreviation, fiscal year, case number)

TO: (respondent’s name)  
(address)

ORDER: It is hereby ordered that (name) is fined (amount). The fine is due now and payable.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner’s Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner’s Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

DATED: (date) \_\_\_\_\_

(respondent’s signature) \_\_\_\_\_.  
Respondent

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## Stipulation and Waiver to Order, Continued

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**Is a signed Waiver to Order necessary to close a case prior to expiration of the 20 days the Respondent has to request a hearing?**

Yes. However, if the Respondent mails in a check prior to the expiration of the 20-day period in which he/she has to request a hearing without signing and returning the Stipulation and Waiver to Order as written, the check should be held until the expiration of the 20-day time period. At that time, the check may be cashed and the case closed. A letter should then be sent to the Respondent :

1. Restating the language of the NOPA that failure to request a hearing within 20 days is a waiver of the right to a hearing and the right to appeal the CAC's decision;
2. Stating that the CAC has received and accepts the Respondent's check in discharge of the fine set forth in the order and stipulation previously mailed to the Respondent ; and
3. Stating that the CAC has made a final decision and that the case is closed. See the example letter that follows after the "What if?" discussion.

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**"What if?"**

The currently used "Stipulation and Waiver to Order" does not require an admission of guilt. It is the civil equivalent of the criminal nolo plea and merely admits that the facts before the CAC (in the NOPA) constitute a violation. They are not admitting to the facts, only that if the facts are true, it is a violation. If they sign it, they cannot say, "even if I did that, it is not a violation."

The NOPA itself states that if the Respondent does not request a hearing within 20 days, the CAC can take the action proposed without a hearing and the Respondent has waived his/her right to a hearing and to appeal the CAC's decision. This is, in practical terms, exactly the same as signing the form. So, if the Respondent does not request a hearing, waits until the 20 days has elapsed, and then sends in a check, no matter what is said in a letter or written on the stipulation, it is over. If they send it in under protest or without signing the form prior to that time, the above procedure should be followed.

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## Stipulation and Waiver to Order, Continued

**Sample letter  
to close a case  
after 20 days  
when fine is  
paid without  
signing the  
“Stipulation  
and Waiver to  
Order”**

To:

File No.

You are hereby notified that the County Agricultural Commissioner finds you have violated section(s) \_\_\_\_\_ of the Food and Agricultural Code and/or section(s) \_\_\_\_\_ of Title 3 of the California Code of Regulations. You have failed to request a hearing within 20 days of the receipt of the Notice of Proposed Action in this case and, therefore, have waived your right to a hearing to contest the charges stated in the Notice of Proposed Action and all rights to appeal this ruling.

As set forth in the Stipulation and Waiver to Order which accompanied the Notice of Proposed Action, the Commissioner has determined the fine for the above mentioned violation(s) is \$\_\_\_\_\_ and now orders the fine due and payable.

The Commissioner has received and now accepts your check in the amount of \$\_\_\_\_\_ in discharge of this obligation. This matter is now closed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Agricultural Commissioner

### References

- Black's Law Dictionary, Seventh Edition
- Hearing Officer Sourcebook, Second Edition, May 1995